



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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**DEC - 4 2013**

*and via email to [wmcginley@pattonboggs.com](mailto:wmcginley@pattonboggs.com)*

RE: MUR 6763  
Maine Republican Party and Ben  
Lombard in his official capacity  
as Treasurer

Dear Mr. McGinley:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that Maine Republican Party and Ben Lombard in his official capacity as Treasurer (the "Committee") may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On November 19, 2013, the Commission found reason to believe that the Committee violated 2 U.S.C. § 434(b) and (g) and 11 C.F.R. § 104.4(a) and (c), provisions of the Act and the Commission's regulations. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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William J. McGinley, Esq.  
Patton Boggs  
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We look forward to your response.

On behalf of the Commission,

A handwritten signature in black ink, appearing to read "Ellen L. Weintraub". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Ellen L. Weintraub  
Chair

Enclosures  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Maine Republican Party and Ben Lombard MUR: 6763  
in his official capacity as treasurer

**I. INTRODUCTION**

This matter was generated based on information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Audit Division referred this matter to the Office of General Counsel following an audit of the Maine Republican Party's activity from January 1, 2007, though December 31, 2008. See 2 U.S.C. § 438(b). The Final Audit Report ("FAR"), approved by the Commission on February 14, 2013, contained a finding related to Maine Republican Party's understatement of disbursements in 2007 and a second finding relating to its failure to report and file notices of independent expenditures in 2008. The Commission found reason to believe that Maine Republican Party and Ben Lombard in his official capacity as treasurer, violated 2 U.S.C. § 434(b) and (g) and 11 C.F.R. § 104.4(a) and (c).

**II. FACTS**

The Maine Republican Party and Ben Lombard in his official capacity as treasurer (the "Committee") is a state party committee. In comparing the Committee's bank records with its disclosure reports, the Audit Division found that in 2007 the Committee understated disbursements by \$29,346. Referral at 1, 2. This figure is the net of unreported disbursements (\$36,506); reported disbursements not supported by check or debit (\$4,006); a disbursement from the non-federal account erroneously reported (\$3,165); erroneous reporting of disbursement amounts (\$227); and an unexplained difference (\$216). See *id.* at 2.

1           The Audit Division also examined, *inter alia*, the Committee's disbursements for 250,000  
2 absentee ballot application mailers disseminated on October 28 and 29, 2008. The Committee  
3 provided Audit with two versions of the mailer. See Referral at 4. The top of the first version  
4 states, "Good Jobs. A Strong Economy. Independence from Foreign Oil." Directly below this  
5 text are photos of Presidential candidate Senator John McCain; Vice-Presidential candidate  
6 Governor Sarah Palin; United States Senate candidate Susan Collins; and Charlie Summers, a  
7 candidate for the U.S. House of Representatives in the First Congressional District of Maine.  
8 The name of each pictured candidate appears next to a checked box directly under the  
9 corresponding photo. There is also blank space reserved for the inclusion of two state  
10 candidates.<sup>1</sup> At the bottom, the mailer states, "Help Team Maine Today by Signing up to ...  
11 Canvass a local precinct door to door." (ellipsis in original). The second version of the mailer is  
12 predominantly the same as the first except for Summers' photograph — in its place is a blank  
13 space reserved for a "us congress" candidate.<sup>2</sup>

14           In its original 2008 October Quarterly Report, the Committee reported the total cost of  
15 the mailers, \$84,902, as an operating expenditure on Schedule B. The Committee asserts that it  
16 was reported as an operating expenditure because a previous treasurer believed it qualified for  
17 the "slate card" exemption. Referral at 5-6. The Audit Division determined that "since the  
18 documents contain a statement of the candidates' positions on several issues and include a

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<sup>1</sup>       The copies of the mailer provided by the Committee during the audit process were draft versions that are cut-off around the edges. The space for the state candidates was not yet complete, merely designating generically that the space was reserved for their inclusion.

<sup>2</sup>       During the Audit process, the Committee provided an invoice indicating that the Committee was billed for two different versions of the mailer. Approximately half of the mailers were itemized as "Summers" (presumably Charlie Summers, who is pictured in version 1), and half were itemized as "Frery" (presumably John Frery, the 2008 U.S. Congressional candidate in Maine's Second Congressional District), but we do not have any copy of the mailer that includes a photo of Frery.

1 solicitation of volunteer canvassing, they go beyond the limitations of the state card exemption.”<sup>3</sup>

2 *Id.* at 5. Based on the amount of space devoted to the federal candidates, the Audit staff  
3 determined that \$56,601 of the cost should have been reported as independent expenditures.<sup>4</sup> *Id.*

4 Following the Interim Audit Report and after further review, however, the Committee  
5 agreed that the disbursements were independent expenditures and that the slate card exemption  
6 did not apply. *Id.* at 6. The Committee partially amended its disclosure reports in response to  
7 the Interim Audit Report and completed its amendments in response to the draft FAR; the  
8 Committee’s disclosure reports now properly disclose the \$56,601 federal portion of the mailers  
9 as independent expenditures. *Id.*

10 The Committee’s response does not dispute the Commission’s findings, instead asserting  
11 that two mitigating factors counsel for dismissal or referral to the Alternative Dispute Resolution  
12 Office (“ADRO”) rather than enforcement. Resp. at 1. First, the Committee argues that the  
13 amounts at issue were a small fraction of the Committee’s total 2007-2008 receipts and  
14 disbursements (\$1,400,000 and \$1,300,000, respectively) and that, therefore, the Commission  
15 should dismiss the Referral or, in the alternative, send the matter to the ADRO. Resp. at 1-2.  
16 The Committee also argues that an employee of the Committee’s then-accounting firm pleaded  
17 guilty to embezzling approximately \$48,000 in Committee funds, leading the Committee to hire

<sup>3</sup> The slate card exemption from the Act’s definitions of contribution and expenditure for state party committees, see 2 U.S.C. §§ 431(8)(B)(v) and (9)(B)(IV), is available when the materials are confined to certain information such as identification of candidates by name or picture, the office or position currently held, the office being sought, party affiliation, and procedural voting information. But, “[p]ublications that go beyond these informational limitations and provide additional biographical information, descriptions of candidates’ positions on the issues, or statements of party philosophy, do not qualify under the slate card exemption.” Advisory Op. 2008-06 (Democratic Party of Virginia) at 3. In addition to the pictures of candidates and the checked boxes, the Committee’s mailers stated above the candidates’ pictures, “Good Jobs. A Strong Economy. Independence from Foreign Oil,” and at the bottom stated, “Help Team Maine Today by Signing up to ... Canvass a local precinct door to door,” (ellipses in original), making them ineligible for the slate card exemption.

<sup>4</sup> Audit also determined that \$28,301, the portion allocated to the state candidates, should have been reported as Federal Election Activity (“FEA”). Referral at 5. This issue was not included in the Commission’s findings.

a different accounting firm, audit its books, and institute improved internal controls. Resp. at 2;  
*see also* Referral at 2-3 (noting the embezzlement).

### III. LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended, (the "Act") requires treasurers to file reports disclosing the total amount of disbursements for the reporting period and for the calendar year. 2 U.S.C. § 434(b)(4). As the Commission found in the FAR, in 2007 the Committee understated disbursements by \$29,346.

The Act defines "independent expenditure" as an expenditure by a person expressly advocating the election or defeat of a clearly identified federal candidate that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents. 2 U.S.C. § 431(17). *See also* 11 C.F.R. § 100.22.

Every political committee that makes independent expenditures must report those expenditures in its regularly scheduled disclosure reports in accordance with 11 C.F.R. § 104.3(b)(3)(vii). 11 C.F.R. § 104.4(a). Such a political committee must disclose on Schedule E the name of a person who receives any disbursement during the reporting period in an aggregate amount or value in excess of \$200 within the calendar year in connection with an independent expenditure by the reporting committee. The report also must disclose the date, amount, and purpose of any such independent expenditure and include a statement that indicates whether such independent expenditure is in support of or in opposition to a candidate, as well as the name and office sought by such candidate. 2 U.S.C. § 434(b)(6)(B)(iii); 11 C.F.R. §§ 104.3(b)(3)(vii), 104.4(a).

1           A political committee that makes or contracts to make independent expenditures  
2 aggregating \$1,000 or more in connection with a given election after the 20th day but more than  
3 24 hours before the date of an election must also file a report describing the expenditures within  
4 24 hours. 2 U.S.C. § 434(g)(1)(A); 11 C.F.R. § 104.4(c). These reports, known as 24-hour  
5 notices, must be filed “on the day following the date on which a communication that constitutes  
6 an independent expenditure is publicly distributed or otherwise publicly disseminated.”  
7 11 C.F.R. § 104.4(c). A political committee must file additional reports within 24 hours after  
8 each time it makes or contracts to make independent expenditures aggregating an additional  
9 \$1,000. 2 U.S.C. § 434(g)(1)(B); 11 C.F.R. § 104.4(c).

10           The Committee made independent expenditures in the aggregate amount of \$56,601 on  
11 October 28 and 29, 2008 (within 20 days of the November 4 general election) in connection with  
12 absentee ballot mailers that expressly advocated the election of at least four federal candidates.  
13 Referral at 5; 2008 Amended October Quarterly Report at 132-33 (filed June 21, 2012). The  
14 Committee, however, failed to file 24-hour notices for independent expenditures, as required by  
15 2 U.S.C. § 434(g) and 11 C.F.R. § 104.4(c), and improperly disclosed the independent  
16 expenditures as operating expenditures on Schedule B in its original 2008 October Quarterly  
17 Report, rather than Schedule E, as required by 2 U.S.C. § 434(b)(6)(B)(iii); 11 C.F.R.  
18 §§ 104.3(h)(3)(vii), 104.4(a). *Id.* Therefore, there is reason to believe that the Committee  
19 violated 2 U.S.C. § 434(b) and (g) and 11 C.F.R. § 104.4(a) and (c).